1949. File No. O. Extradition 49

Legal Deptt.

A BRANCH

Subject:— Opinions under the Indian Extradition Act 1903

P.72

File No. O. Extradition/49

Gen. 194 e.

37-A

CONTENTS.

Legal Department File.No. 0.Extradition/49.

Sr. No.	Comp.No.	Subject	Pages.
		Opinions under the Indian Extradition Act, 1903.	
1.	O.No.192 7.1.1949.	Whether evidence to is justify surrender of accused to Baroda State.	1 - 2.
2.	O.No. 232 8/1/49.	Request in surrender of accused to Govt.of Portugese India.	3 - 9.
3.	O.No.320 11/1/49.	Whether there is evidence Moti Jetha to insist surrender to Baroda State.	11 - 12.
4.	O.No.511. 15/1/49.	I.P.C.Sects. 420, 467,471 Whether there is evidence to surrender accused Padamkumar to Udaipur.	13 - 16.
5.	O.No.1134. 31/1/49.	I.P.C. Sec. 420- whether there is Prima facie evidence appoint Mahashankar Thakar for effance under.	17 - 20.
6.	O.No.2232 21/2/49.	I.P.C. Sects. 380, 457. Whether there is evidence to justify surrender if accused to Baroda State.	21- 22.
7.	O.No.2271. 24/2/49.	I.P.C. Sec. 435. Whether there is evidence to justify surrender to Baroda State.	23 - 24.

8	O.No.1329 20/2/49.	Sects. 9, 3, Issue of directions to Magistrate is to hold personal enquiry under	25 - 26.
9.	O.No. 2308 26/2/49.	Dgmt. of India Rule 81(4) Whether there is sufficient evicence to surrender accused to Baroda Govt.	27 - 28.
10.	O.No.2384 1/3/49.	Prima facie case for surrender to Baroda State.	29-30.
11.	O.No. 2601 7/3/49.	-do-	31 - 32.
12.	O.No. 2755 10/3/49.	- do -	33 - 34
13.	O.No. 2874 12/3/49	-do -	35 - 36
14.	o. 2982 3/49.	I.P.C.Secs. 411. 414. Question whether accused should be extradited for petty offences.	37 - 38.
15.	No. 3185. 21/3/49.	I.P.C. Secs. 366, 379, 406, 497, and 498 whether offences under these sections an extraditable offences for surrender from Madhya Bharat Govt.	39 -40.
16.	O.No.4346 21/4/49.	I.P.C. Sect. 379 Whether there is prima facie evidence for surrender of amused Moti Dabhai.	41 -42.
17	O.No.4577 27/4/49.	-do-	43-44.

Contents

Sr. No.	Case.	Subject.	Page.
18	Cr.Rev.No.[illegible] 23/5/49.	Whether there is prima facie evidence for surrender of accused Moti Dalbai.	45 - 46.
19.	Cr.Rev. 613 1/6/49.	Whether it is necessary to hold extradition after integration of Baroda.	47 - 48.
20.	Cr.Rev. 627 6/6/49.	Extn. Sec.9. I.P.C. Secs. 148, 333. Whether the person convicted for extradition offence and had escaped before he was arrested for undergoing imprisonment should be sufficient for referring to the case to Magistrate.	49 -52.
21.	Cr.Rev. 635 21/6/49.	Exclusion of suspences.	53- 54.
22.	Cr.Rev.[illegible] 2/8/49.	Extradition of accused of B Park from Baroda to Saurashtra.	55-56.
23.	Cr.Rev. 728	Secs. 3, 9- Whether it is necessary to insist on the presence of witnesses etc.	57 - 58.
24.	Cr.Rev. 761 23/9/49.	Sec.9. E.C.T.(T.P)Act, 1946. Whether offences under this Act are extraditable.	59 - 60.

1	2	3	4.
25.	D.No. 10753 25/9/49.	Whether certain offences should be made extraditable offences.	61 - 62.
26.	D.No. 10820 12/11/49.	I.P.C. Sec. 397. Whether in view of the warrant Govt. can insist on Prima facie evidence.	63- 64.
27.	D.No. 11467 22/11/49.	E.J.(T.P) Act, 1946 Extradition for offences under	65 - 70.
28.	R.I.No.19727/30-11-49.	Vide S.D. Endt. No. 2233/46 of dt. 26-11-49.	71 - 72.
29.	O.No. 14437/12-12-49.	Whether there is sufficient Prima facie evidence to to justify surrender for offences under.	73 - 76.

19/4

L.D. 17515.

31-12-1948

This is a requisition from the Government of Baroda for the extradition of Maga Jalam and five others. The accused are charged with offences under sections 323-324 and 148 of the Indian Penal Code in that early in the morning on 29th January 1948 the accused armed with spears, swords, sticks etc., went to the house of Bai Jethi the complainant and struck the complainant's husband Mahiji Lakha and his brother Kalaji with those weapons and causing them several casulties and incised wounds. The complainant was formarly married to Maga Jalam the accused No. 1 but subsequently she eloped and was living with Mahiji Lakha as his wife. This appears to be the cause of the feud between the parties. The evidence on record has been summarised by the Extradition Officer at slip A . I have also gone through the Gujarathi deposition. The evidence of Bai Jethi, Mahiji Lakhaji, Kalaji Lakhaji and of t e medical officer who treated the injured persons shows a prima facie case against the accused. Reply may be:

A There is sufficient prima facie evidence against the accused to justify their surrender to Baroda State.

Id/- R.T?K.

6-1-49

Id/- P.M.L.

6-1

Remembrancer of Legal Affairs.

U.R. to P. & S.D.,No. 192 dated 7-1-1949.

PSM. 4-6
4C

Submitted with pp.

2. Please see our note at p. 45 ante and u.o.r. at p. 47 ante. The P.& S.D. has now sent a copy of judgment in criminal Appeal No. 1165 (Pl. see pp. 39-43 ante)..

Id/- D.J.K.
19-11

A.A.S.

The facts have been stated in A.S.'s note dated 3rd August 1948 (slip A, file O.Extradition/48). The R.L.A. advised on the facts that there was a prima facie evidence to justify the surrender of the accused to Portuguese Indian Authorities. Before the accused could be surrendered to the Portuguese Indian Authorities, he filed a petition in the High Court, Bombay, which directed for the reasons stated in the judgment (now forwarded by P. and S.D.) that the accused be set at liberty. The P. and S.D. proposes to inform the Govt. of Portuguese Indian that their request for the surrender of the accused cannot be effected for the reasons to be explained. The papers shown to the R.L.A. for favour of remarks.

2. The High Court has held that in the requisition made by the Govt. of Portuguese India (pp. 1-3 ante) no specific charge under sec. 407 I.P.C. was made against the accused. The High Court seems to hold that a charge "for abusing facilitias against Muhamed Mubarak son of Mubarak Muhamed and tindal of country craft 'A LIT REHMAN'" is not a specific charge against the accused even though it was accompanied by detailed evidence. The High Court therefore held that proceedings before the C.P.M., Bombay, were entirely without jurisdiction. But it has been added in the judgment that "It would be of course open to the C.P.M. to commence

proper proceedings upon a proper direction if one is received, from the Provincial Government". In view of the observations the Govt. of Portuguese India may also be informed that x if the accused is reported to be in India a proper requisition in the light of the observations of the High Court, Bombay, may again be made to this Govt. whereupon the steps will be taken to surrender the accused.

Id/-K.J.P.
-11

K.K R.L.A.

I would like to talk this case over with Mr. Thakore. It is diffieult to say who is to blame the judge a the A.G.P. Making due allowance for the fact that this is erjudgment of Bavdekar J. I feel that the A.G.P. has not done his duty. The material was very clear and a charge was in terms specified by the Portuguese Government.

Id/- P.M.L.
29-11

PSM. 4-6
4C

No. 5673

Office of the
Government Pleader, High Court,
Bombay, 28th December 1948.

From

H.M.Choksi, Esquire, B.A.(Hons)LL.B.
Government Pleader, High Court.

To

The Secretary to Government,
Legal Department,
Bombay.

Subject:- Crim Revision Application No. 1165/1948 in the case of petitioner Mohamad Mubara (Ori. accused).

Sir,

With reference to your letter No. 11596 dated the 7th December 1948, on the above subject, I have the honour to return herewith the case papers (file No. 2488/46, Political & Services Department A I Branch) sent by you with the letter under reference.

Yours faithfully,

Sd/- B.G.Thakor

For Government Pleader, High Court.

PSM.
4C

The Deptt. Please ascertain informally from them whether all the paper including the warrant were forwarded to the C.P.M. and produced in High Court. And we should advise a follows:-

The judgment is clearly wrong; but no relief is possible by way of appeal or review. There is now no alternative but to adopt the suggestion make in the concluding portion of the judgment.

Id/- P.M.L.
4-1

PSM. 4-6
4C

Office of the R.L.A.

The judgment is clearly wrong; but no relief is possible by way of appeal or review. There is now no alternative but to adopt the suggestion made in the concluding portion of the judgment.

Id/- P.M.L.

6-1

Remembrancer of Legal Affairs.

U.R. to P.& S.D.,No. 232, dated the 8th January 1949.

PSM. 4-
4C

Office of the R.L.A.

It may be that the evidence forwarded by the Baroda Government seems to disclose a prima facie case on paper. There are, however, certain circumstances in this case which must be considered again the requisition for extradition.

2. In this case there are two rival complaints including the one in respect of which extradition is sought. The complainant at whose instance extradition is sought is Moti Jetha, a Patidar, whereas the persons who are sought to be extradited are poor Wagharis. It is the allegation of one of them, accused No. 2 Mathur Garbad, that Moti Jetha molested his daughter on the 2nd fof February 1947. The incident in respect of which Moti Jetha has lodged a complaint has also been referred by him to that same date, namely, the 2nd of February 1947. We find, however, that Mathur Garbad lodged his complaint with the utmost promptitude at 5-30 a.m. the very next day whereas Moti Jetha did not lodged his complaint before the Magistrate of Petlad. till the 4th of February 1947. There is thus considerable substance in the view taken by the Mamlatdar of Cambay that Moti Jetha's complaint must be by way of a counter-blast against the complaint filed by Mathur Garbad. Judging by the social status of the parties, it is extremely unlikely that the poor waghari should implicate the Patidar Moti Jetha in an offence which involve the good name of his own daughter. That daughter unfortu ately is now dead, and the best evidence is thus lost. However that may be, having regard to the genesis and history of the complaint filed by Moti Jetha, I am inclined to say that this is

not a fit case for extraditing the Waghari a ccused.

Id/- P.M.L.

10-1

Remembrancer of Legal Affairs.

U.R. to P. & S.D.,No. 320, dated the 11th January 1949.

PSM. 4-6
4C

Office of the R.L.A.

The Government of the United State of Rajastha has made a requisition to the Government of Bombay for the extradition of one Padamkumar Jagmohanlal for the offence under section 420 of the Indian Penal Code. The R.L.A. is requested to advise whether the prima facie evidence made out against the accused is sufficient to justify his surrender.

The evidence prima facie shows that the accused, by using forged documents and probably also using the pseudoname of Shyamlal cheated the merchants and induced them to part with large sums of money. The evidence is sufficient not only for a charge under section 420 but also under sections 467, 468 and 471 of the Indian Penal Code.

The P. and S.D. have also requested the R.L.A. to advise on the points taken by the accused in his statement which is at p. 37. He has contended therein (1) that he has not committed any offence and there is no prima facie evidence against him, (2) that the papers of the prima facie evidence received from the State cannot be used against him because section 17 of the Extradition Act under which they can be received as evidence occurs in Chapter III of the Act whereas the present extradition proceedings are conducted under section 3 which occurs in Chapter II. His third point is not very intellegible but he seems to contend that the legality of the change in extradition procedure made by Government since the passing of the Indian Independence Act is open to question. Lastly , he contends that the Rajputana States having acceded to the Indian Union, Extradition Act does not apply and the present

proceedings are without jurisdiction.

Points (1) and (2) are obviously without any substance. As stated before, the papers received from Hmt Udaipur disclose sufficient prima facie evidence against the accused. The present inquiry is not under section 3 but under section 9 read with section 3 of the Extradition Act and therefore the prima facie evidence received from the State authorities is admissible under section 17. The third point of the accused is vague. As regards his last ;round, the State of Udaipur (Mewar) is not a part of the United State of Rajasthan and although it has acceded to the Indian Dominion, the Civil and Criminal jurisdiction of the several integrated States is surrendered not to the Indian Dominion but to the Government of the newly formed State (vide Article VI of the covenant between Rulers of the covenanting States pp. 77 of the White Paper on Indian States). Therefore the accused's contention that Extradition Act does not apply is untenable. It is only in the case of acceding State which have surre-nder their criminal jurisdiction to India that extradition becomes unnecessary.

Id/- P.M.L.

14-1

Remembrancer of Legal Affairs.

U.R. to P. and S.D., No. 511, dated the 15th January 1949.

PSM. 4-6
4C

224
21-1-49.

The Government of Baroda has made a requisition for the extradition of one Mahashankar Hir alal Thakar for an offence under section 420 of the Indian Penal Code. Government directed an inquiry under section 9 read with section 3 of the Indian Extradition Act and the First Class Resident Magistrate, Anand who made an inquiry has reported that there is no prima facie evidence against the accused for an offence under section 420. The papers are referred to the R.L.A. as usual for advice whether the accused should be surrendered.

The complainant in this case is Madhusudan Vishwanath Patwardhan Shastri, by trade a jewleller in Baroda. His case is this. On 19th April 1948, in the afternoon, he went to the Dena (Devkaran Nanji) Bank at Baroda for getting a draft of Rs. 340/-. He had with him a leather case containing jewllery. He went into the room of the Bank Manager where Mr. Nanubhai Gokuldas the Assistant Manager was then in charge of the Bank as acting Manager. The Manager inquired what the complaint complainant was carrying in the bag whereupon the complainant opened it and began to show the various articles of jwellery. The complainant then states that about the same time the accused also came in the bank and he also began to take a look at the complainant's ornaments. The accused then informed the complainant that his "Sheth" whose brother's marriage was coming off wanted to buy some ornaments and invited him (the complainant) to come to the Sheth's house. As the complainant had no time the accused gave him his Sheth's card on which the name of 'K.M. Manswwala' was printed. At 5 p.m. on the same day the complainant went to the shop of 'K.M. Manswawala'

retail and wholesale dealer in soap and tea". The accused who was in the shop invited the complainant and sent another man to call the Sheth. The Sheth came up a few minutes later and then both he and the accused selected articles of jewllery worth Rs. 2000/- Having purchased these ornaments they told the accused to come the next day for the money and as they were merchants, the complainant did not suspect them. The next day the accused received from the man called K.M. Mansawala a crossed cheque of Rs. 2000/- drawn on the Bombay Provincial Co-operative Bank Ltd., Anand. The cheque was payable to K.M. Mansawala or bearer and was signed by P.S. Vyas. When the complainant showed the cheque to his father the latter told him that he should have demanded cash. On the following day therefore the complainant returned to the shop of Mansawala but he found it locked up. Suspecting fould play, the complainant went to Anand where he presented the cheque in the Provincial Co-operative Bank for payment. The Bank Manager however informed him that the cheque could not be honoured because the drawee P.S. Vyas had less than two hundred rupees to his credit. From the Bank he learnt that P.S. Vyas was of Petlad but when the complainant went to Petlad he did not find any one of that name. On his return journey to Baroda the complainant saw the accused at the Anand Railway Station. He identified the accused before the Anand Railway Police and had him arrested there and then. The complainant returned to Baroda and lodged his complainant with the Police.

There is however no evidence to carroborate the above story of the complainant in so far as it implicates the accused. Mr. Manubhai, the Manager of the Dena Bank, states that on 19th April 1948 the

complainant came to his bank for getting a draft and that at that time he showed him the ornaments contained in the leather case. But the further evidence of the Manager not only does not support the complainant but actual ly contradicts him. The complainant deposed that he had talked with the accused in the Manager's office. On the other hand the Manager who sits in a special room of his own which has a spring door, positively asserts that on the day in question he had not seen the accused at the bank or in his room.

Another witness Shambhuprasad Maneklal had by chance gone to the shop of Mansawala on the date of offence. He deposed that the complainant was at that time in the shop and was showing ornaments to two or three other men but who they were he did not know. He did not identify the accused in the Court. The evidence of the railway police officer does not advance the complainant's case.

On the other hand the accused has led sufficient credible evidence to prove that on the date of offence he was not at Baroda at all but was at Ahmedabad. The accused who is an educated man is employed as the Secretary of the National Mills Co., Ltd., at Ahmedabad. The evidence of Kantilal, a clerk in the office of the District Magistrate, Ahmedabad proves that at 1-30 p.m. on 19-4-1948 the accused had come to the District Magistrate's office for obtaining an arms licence. Somabhai Chhotabhai, the Manager of the National Mills, Ahmedabad deposed that the accused who was employed in the Mill for 18 years was present in the Mills throughout the day on 19-4-1948. As Secretary the accused had to pass all bills of goods sold by the Mill and the witness proved two such bills of 19-4-1948 bearing the signature of

the accused. The witness fusther proved that on the day on which day on which the accused was arrested 25/26-5-1948 he was on leave and had gone to Anand. Three other clerks of the National Mills who were examined also proved the accused's presence at Ahmedabad on the relevant date. They also produced several wage bills of the Mills of 19-4-1948 bearing the accused's signature.

The complainant himself admitted that before 19-4-1948 he had not seen the accused. With the exception of the complainant's own word therefore t ere is no evidence to show that it was the accused who cheated the complainant. On the other hand the evidence led by the accused prima facie establishes his alibi. Reply may be-

A / The Prima facie evidence is not sufficient to justify the surrender of the accused to the Baroda State. / A

Id/- R.T.K.
28-1-49

Id/- P.M.L.

28-1-49

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 1134, dated the 31-1-1949.

PSM. 4-6
4C

1305/27-1-49

A.S.

This is a requisition from the Govt. of Baroda for the extradition of Umedji Govaji and Fataji Mulji for offences under sections 380 and 457 of the Indian Penal Code. The charge against the accused is that on 16-3-1948 they broke open the complainant's house and stole two bullocks.

The complainant's story is that on the date of offence he had gone to his field to keep a watch over the crops. His uncle Shivram Joita noticed that house was broken open and the bullocks were missing. An alarm was raised in the village and the Police Patel and the villagers went out in search of the missing bullocks following the footmarks of the animals and the persons who accompanied them. The footmarks were traced to the villages of Vaghana and Umaroo but there was no trace of the bullocks or the accused. Shivaram Joita, the uncle of the complainant, and the Police Patel corroborate this story but their evidence does not implicate the accused. The names of the accused are disclosed only by Kachraji Pabaji who says that the accused came to his field with two bullocks. He asked them from where they had brought the animals and was told that they were smuggled from Palanpur. The accused spent the day near his well and left in the evening.

The prosecution would therefore succed or fail, according as the Court accepts or rejects the evidence of the witness Kachraji. There is not much doubt that the offence was committed. The papers may therefore be returned with the usual reply that there is sufficient prima facie evidence to justify the surrender of the accused to Baroda State.

Id/- R.T.K.
22-2-49

R.L.A.

Id/- P.M.L.
22-2

U.R. to P. & S.D.,No. 2232, dated 24-2-1949.

PSM. 4-6
4C

L.D. 2234
dt. 14-2

This is a requisition from the Government of Baroda for the extradition of Motiji Naranji for the offence of mischief under section 435 of the Indian Penal Code. The accused is alleged to have set fire to the jowar and Bajri stocked in the complainant's field on the night of 25-3-1948. The Prima facie evidence consists of the complainant and one Jiwraj Deoji both of whom are eye witnesses. After going through the the summary of evidence made by the Extradition Officef Baroda and the Gujarati depositors I agreewith the District Magistrate Banas Kantha that there is sufficient prima facie evidence to justify the surrender of the accused to the Baroda State for the offence under section 435 of the Indian Penal Code. Replay may issue accordingly.

R.M.M
Id/- ~~R.T.K.~~

23-2-49

R.L.A.

Id/- P.M.L.
23-2

A to A.

U.R. to P. & S.D.,No. 2271, dated 24-2-1949.

PSM. 4-6
4C

Office of the R.L.A.

The papers are referred to the Remembrancer of Legal Affairs for advice whether Government can issue a warrant for the surrender of the accused to Goa Police and end this matter.

Such action would not be in strict compliance with the High Court's directions. It will be safer to issue a fresh direction to the Magistrate to hold a formal inquir under section 9 read with section 3. The evidence forwar ded by the Goa authorities can be received as evidence in the inquiry under section 17(1) of the Indian Extradition

Id/- P.M.L.

26-2

Remembrancer of Legal Affairs.

U.R. to P. & S.D.,No. 2329, dated the 28th February 1949.

PSM. 4-6
4C

2269
14-2-49

This is a requisition from the Government of Baroda for the extradition of Mohanlal Mansukhbhai for an offence under Rule 81(4) of the Defence of India Rules as applied to the Baroda State. The charge against the accused is that he exported 7 bags of waste cotton from Kalol (in Baroda State) to Ahmedabad without the requisite permit and thereby contravened an order of the Baroda Government passed under Rule 81(1)(2) of the Defence of India Rules. The District Magistrate was of the view that there is no case whatsoever against the accused.

P. & S.D. is informed that the papers received from the Governme t of Baroda do not disclose any prima facie case against the accused to justify his surrender.

R.M.M.
Id/- ~~R.T.K.~~

23-2-49

R.L?A.

A to be the reply .

Id/- P.M.L.

23-2

A to A

U.R. to P. & S.D.,No. 2308, dated 26-2-1949.

PSM· 4-6
4C

2490/ 17-2-1949.

This is a requisition from the Government of Baroda for the extradition of four persons viz; (1) Ranchhodji Ramaji, (2) Anarji Chemarji, (3) Bhomaji Nathaji and (4) Pratapji Sujaji for offences under sections 379 and 447 of the Indian Penal Code. The accused are alleged to have committed two distinct offences of theft and criminal trespass in that on or about the 24th February 1947, they entered the houses of Shankar Bechar and Shiva Khoda of Unjha and stole respectively a horse and a camel.

The prima facie evidence on record is sufficient to justify the surrender of only one accused viz; Ranchhodji Ramaji but not of the other three accused.

R.L.R. Sd/ P. M Lad.

U.R. to P.& S.D. No.2384, dated 1-3-1949.

EKN.18/6/

R.I.No.3030, dated 1-3-1949.

Office of the R.L.A.

There is sufficient evidence for a prima faci... justifying the surrender of the accused.

Sd/- P. H. Lad.

Remembrancer of Legal Affairs.

U.R. to P.&S.D. No.2601, dated the 7th March 1949.

EKH.18/6/

R.I.No.3401/7-3-49.

Office of the R. L.A.

There is sufficient evidence for a prima facie case justifying the surrender of both the accused.

Sd/- P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to P. & G.D.,No. 2755. dated the 10th March 1949.

EXH.18/6/

R.I.No.3578 dated 9-3-49.

Office of the R.L.A.

The view taken by the Political and Services Department in the note at page 13 ante is correct.

Sd/ B. M. Lad.

Remembrancer of Legal Affairs.

BKH.18/6/ U.H. to P. & S.D.,No.2874, dated the 12th March 1949.

Office of the R.L.A.

Since the offences under sections 411 and 414 of the Indian Penal Code were not committed in the territory of the Baroda State, no question of extradition for these offences arises. However, there is prima facie evidence justifying the surrender of this accused for his trial under section 457 and 380. Having regard to the paltry nature of the property and the length of time which has elapsed, this does not seem to be a fit case for - extradition.

Sd/- S. M. Lad.

Remembrancer of Legal Affairs.

U.R- to P.& S.D.No.2982, dated 16th March 1949.

BKS.18/6/

Office of the R.L.A.

In the absence of the evidence adduced in this case, it is not possible to advise whether there is prima facie evidence justifying the surrender by the Madhya Bharat Government of the two accused, (1) Ashok Tiwari and (2) Indirabai Shah, for their trial of offences at Poona. The allegations made by the complainant against the accused were that they had committed offences falling under sections 365, 379, 406, 497 and 498 of the Indian Penal Code (see copy of Poona District Magistrate-'s letter at page 33 ante). The reply of the Madhya Bharat Government ~~xxx~~ is that Indirabai is 17 years of age. On that assumption there can be no prima facie case against the accused Tiwari for the offence under sections 365 ~~xxxx~~ is concerned. It is difficult to express any opinion regarding the offences under sections 379 and 406 in the absence of the relevant evidence. It is not legally feasible to comply with the request of the District Magistrate, Poona, in respect of offence under section 498, Indian Penal Code (and also under section 497, which is alleged by the complainant) since these are not extradition offences mentioned in the First Schedule of the Indian Extradition Act, 1903.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to P. & S.D.,No.3185, dated the 24th March 1949.

EKH.18/3/

R.I.No.524v, dated 8-6-49.

The R.L.A. agrees with the view taken by the D.M.Kaira and endorsed by the P.& S.D.

Sd/- P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to P. & S.D.No.4340, dated 21-6-1949.

EKH.18/6/

R.I.No.5564 dated 14-4-1949.

Office of the R.L.A.

Surrender of accused to District Magistrate, Talavad.

Extradition Act, 1903.

A prima facie case justifying the surrender of the accused has not been made out.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to P.&.S.D.No.4577, dated the 27th April 1949.

EKN.18/6/

R.I. No.7542, dated 20-5-1949.

Office of the R.L.A.

The view taken by the Political and Services Department at page 7 that there is no sufficient prima facie evidence justifying the surrender of the accused is correct.

Sd/- P.., Lad.

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No.5726 dated the 23rd May 1949.

EKN.18/6/

R.I.No.6344 dated 28-4-1949.

Office of the R.L.A.

Now that Baroda has integrated, there is no need for holding any extradition proceedings.

Sd/- P. N. Lad.

Remembrancer of Legal Affairs.

U.R. to P.A to C.D. No.6133, dated the 1st June 1949.

EKN.18/6/

Office of the H.L.A.

In this case a person who has been convicted by the High Court of Mysore for offences under section 148 and section 325 of the Indian Penal Code escaped into India before he could be arrested and incarcerated in jail to undergo the sentence of 15 months rigorous imprisonment which was inflicted upon him. The District Magistrate of Chitaldrug District and later of Mysore have approached the Government on the Government of Bombay to make arrangements for surrendering this person who is arrested by the Police at Ranibennur and is kept in custody there.

2. The case would be governed by section 9 of the Indian Extradition Act, 1903, and it has been held that the words " a person accused of having committed an offence" occurring in that section include a person who has been convicted of the offence. See H.L.A's opinion No. 8704 dated 11th December 1944, and the case of Ex parte Moser (1918) 2 King's Bench 698. Under section 9, once a requisition is made, it is to be dealt with in accordance with the procedure prescribed by section 3. The papers would, therefore, have to be sent to the Magistrate directing him to inquire into the case. At present the statement by the District Magistrate, Chitaldrug, reinforced by a similar statement from the Government of Mysore that the person concerned has been convicted of extradition offences and had escaped before he could be arrested for undergoing the imprisonment awarded against him should be sufficient for the purpose of referring the case to the Magistrate. The Government of Mysore may be advised to supply to the Magistrate further proof, if necessary, of the

fact.....

fact of conviction and escape, such as a certified copy of the judgment etc.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.6270, dated the 6th June 1949.

EKM.18/6/

Office of the R.L.A.

There is no objection to the course suggested by Home Department provided the sentences so far imposed are consecutive and making due allowance for remissions and also his present age, there is no likelihood for the prisoner's release except in the remote future. The other cases may be withdrawn after the sentences already awarded are confirmed on appeal, if any be lodged.

Sd/ P.E.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D., No.6835, dated the 21st June 1949.

KKM.18/6/

R.I.No. 10426 dated 9-7-49

Office of the H.L.A.

Extradition of accused Bhura Rana from Baroda to Rajula (Saurashtra).

Now that Baroda is to become part of the Province with effect from 1-8-1949, the course suggested by P. & S. D. need not be pursued. The requisition will have to be treated as made to the Provincial Government.

Sd/- P. H. L.G.

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No.8663, dated 2nd August 1949.

EXH.18/6/

Legal Department.

Whether it is necessary to insist on the presence of witnesses; The Indian Extradition Act 1903; Sec.9 read with sec.3.

The requisition is apparently being dealt with under section 9 read with section 3 of the Indian Extradition Act 1903. It is no doubt true that under sub-section 3 of section 3 the Magistrate has to inquire into the case in the same manner and has the same jurisdiction and powers as nearly as may be as if the case were one triable by the Court of Session or High Court and he, 'shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal." The expression 'such evidence as may be produced in support of the requisition' shows that it is not necessary for the Magistrate to insist upon the State authorities to produce witnesses in support of their requisition. The documentary evidence forwarded by the State along with the requisition is admissible in evidence and the inquiry need not be held up because the State authorities do not wish to produce witnesses. It must, however, be pointed out that it is incumbent upon the Magistrate to give the fugitive criminal an opportunity of defence and the Magistrate, should invite him to produce evidence, if any, in his favour. The failure to do so is not a mere irregularity but goes to the jurisdiction of the Magistrate. The Magistrate should, therefore, xbe required in this ase to give such opportunity to the accused before takingx a decision as to whether a prima facie case has been made out.

Sd/ P.N.Lad.
Remembrancer of Legal Affairs.

U.R. to No. 9128 — F. & S.D. dated 12-6-1919.

EKM.18/6/

Office of the H.L.A.

The offences under the Essential Supplies (Temporary Powers) Act, 1946 are not extraditable offences. But like other non-extraditable offences, proceedings are taken under section 6 of the Indian Extradition Act, 1903 for the surrender of the accused who have committed offences under the Essential Supplies (Temporary Powers) Act, 1946. If States and Unions of States are to continue within the Dominion it is advisable that offences under that Act should be made extraditable offences and be included in the First Schedule attached to the Indian Extradition Act, 1903, as, otherwise, difficulty is experienced in securing the presence of accused persons.

Sd/- P.L. Lad.

Remembrancer of Legal Affairs

U.O. to P. & G.D.No.9464, dated the 23rd August 1949.

EKN.18/6/

Office of the H.L.A.

Whether excise offences should be made extradition offences.

Only acts which are generally considered as offences by all states and countries have been made extradition offences. It is therefore difficult to persuade the Government of India to amend the Indian Extradition Act so as to make the offences under section 65 and section 68 of the Bombay Prohibition Act extraditable offences. The present practice of making requisitions for the surrender of accused persons in non-extraditable cases on grounds of reciprocity may be continued.

Sd/- P.N. L[illegible]

Secretary to Government of Legal Affairs.

H. to R.D.no.10751, dated the 25th September 1948

EKN.18/6/

Legal Department.

One Kharadi Marta Soma of Kupda under Panarva (Mewar), is alleged to have committed an offence falling under section 379 I.P.C. in Panarva and taken refuge in the Sabarkantha District of this Province. At the instance of the Panarva Police, the accused was arrested by the Sub-Inspector at Vijayanagar in the Sabar Kantha District, and the Govt of United State of Rajasthan was requested to send prima facie evidence to enable this Government to decide whether the accused should be surrendered or not. The Government of United State of Rajasthan instead of sending the prima facie evidence forwarded a warrant issued under section 7 of the Indian Extradition Act, 1903, signed by the Regional Commissioner for the Rajputana, States . The question referred to the R.L.A. is whether in view of that warrant this Government can still insist on the prima facie evidence.

The view taken by P. & C.D. is correct.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No.12829 dated 14-11-1949.

EKN.18/6/

R.I.No. 4899 dated 2-4-1949.

Office of the H.L.A.

There is sufficient prima facie evidence in this case to justify the surrender for the offences under sections 379 and 411 of the Indian Penal Code.

Sd/- P.M. Lad.

Remembrancer of Legal Affairs.

U.O. to P & S.D.No.14437, dated the

12th December 1949.

EXN.18/6/